

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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KYONG JA KANG,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

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GLASSER, United States District Judge:

The petitioner has moved this Court to issue an Order appointing an attorney to represent her pursuant to 18 U.S.C. 3006A. The reasons stated for her request have been addressed in two Memorandums and Orders (M&O), which denied her request for relief pursuant to 28 U.S.C. § 2255.

A motion pursuant to that section to vacate, set aside or correct a sentence is not a part of the criminal proceeding in which she pleaded guilty and was sentenced. It is a separate civil proceeding and does not confer a constitutional right to counsel. Such an appointment may, however, be made in the Court's discretion, in accordance with 18 U.S.C. § 3006A(2) when the "interests of justice so require," or in accordance with Rule 8 of the Rules Governing Section 2255 cases in the United States District Court when an evidentiary hearing is required. In its M&O dated November 19, 2009, the Court explicitly stated that such a hearing was not required. The Court also determined in that M&O and in the M&O issued on September 16, 2008, that her claims for relief were without merit and were denied. In Hodge v. Police Officers, 802 F.2d 58, 61-62 (2d Cir. 1986), the district court was instructed to first determine whether the petitioner's

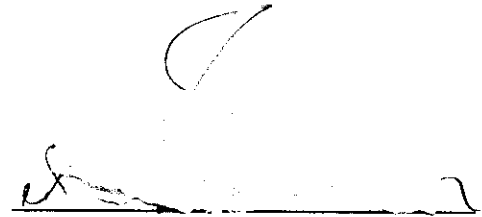
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MEMORANDUM AND ORDER
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position is likely to be of substance. Having determined twice that it is not, her request for appointment of counsel is denied.

SO ORDERED.

Dated: Brooklyn, New York
December 21, 2009



I. Leo Glasser

This Memorandum and Order was filed by ECF and a copy mailed to petitioner
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